17-361

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 176.

E. S. JAFFRAY & COMPANY, W. A. RANSOM & COMPANY, THE DURHAM MANUFACTURING COMPANY, HUDSON BROTHERS, McCOMBS, CARUTH & BURNS, A. E. FILLEY, APPLETON, NOYES & MAUD ET AL., APPELLANTS,

vs.

McGEHEE, SNOWDEN & VIOLETT, JAMES TORRANS, UNITED STATES MARSHAL, AND JAMES M. HUDSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED FEBRUARY 3, 1880.

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1 Be it remembered that on the 5th day of February, 1879, came into the clerk's office of the circuit court of the United States for eastern district of Arkansas, E. S. Jaffray & Co., et al., by Clark and Williams, esqrs., their solicitors, and filed therein their bill of complaint against McGehee, Snowden & Violett, et al., which bill is as follows:

To the honorable the judges of said court in chancery:

Anderson, Star & Co., E. S. Jaffray & Co., and W. A. Ransom & Co., merchants and citizens of the State of New York, The Durham Manufacturing Company, which is an incorporation under the laws of Missouri, and all the members of which are citizens of said State, Hudson Brothers, merchants of St. Louis, also citizens of the State of Missouri, McCombs, Caruth & Burn, merchants, A. E. Filley, merchant, Appleton, Noyes and Maud, merchants, W. H. Kellogg, merchant, Dodd, Brown & Co., merchants, Watkins & Gilleland, merchants, Breckenridge, Hitchcock & Co., merchants, all of whom are citizens of said State of Missouri; W. S. Bruce & Co., merchants, Firstenheim & Welford, merchants, who
2 are citizens of the State of Tennessee; J. B. Wilder & Co., druggists, J. W. Morall & Co., merchants, Hany & Heath, merchants, A. Low & Co., merchants, John Thomas & Co., merchants, all of whom are citizens of the State of Kentucky; Smith & Zeigler, merchants, Hartwell & Chambers, merchants, all of whom are citizens of the State of Louisiana, and S. W. Venable & Co., merchants and citizens of the State of Virginia, bring this their bill of complaint in chancery against James M. Hudson, James Torrans, who is United States marshal for the eastern district of Arkansas, and both of whom are citizens of the State of Arkansas, and McGehee, Snowden and Violett, merchants, and who are citizens of the State of Louisiana. And thereupon, the plaintiffs, your orators, declare and say: That on the 19th day of December, A. D. 1878, the firm of Moss & Bell, merchants, doing business at the city of Pine Bluff, in the State of Arkansas, and in said district, which firm was composed of James C. Moss and John S. Bell, were indebted severally to the plaintiffs for goods, wares and merchandise, purchased of them as follows, to wit:

To E. S. Jaffray & Co., in the sum of $5,481.30.

3 To the firm of W. A. Ransom & Co., in the sum of $880.75.

To Anderson, Star & Co., for $211.00.

To McCombs, Caruth & Burn, $216.82.

To Appleton, Noyes & Maude, $1,787.14.

To W. H. Kellogg, $1,202.62.

To Dodd, Brown & Co., $2,770.86.

To Watkins & Gilliland, $366.77.

To Dunham Manufacturing Co., $6,900.

To Hudson Brothers, $81.15.

A. E. Filley, $9,600.

To J. B. Wilder & Co., $200.00.

J. W. Morall & Co., $118.98.

To Haney & Heath, $365.50.

To A. Law & Co., $858.16.

To John Thomas & Co., $313.85.

Breckenridge, Hitchcock & Co., $574.06.

To Smith & Zeigler, $274.80.
S. W. Venable & Co., $220.85.
Hartwell, Chambers & Co., $313.95.
To Firstenheim and Wilford, $323.30.
And W. S. Bruce, $75.10.

That said Moss & Bell were then in possession of a large store of goods and other personal property, notes, and accounts, and other choses in action, all, or most of which said goods had been purchased of the said plaintiffs, or some of most of which said notes and accounts had been contracted by the sale of other goods so purchased of the plaintiffs, and were the same goods which the said above-named debts were contracted. That said Moss & Bell being unable to make sale of said goods and to convert the same into money in time to meet and pay the said several debts as
4 fast as they came due, and with a view to prompt payment of the same, and any other debts which they might be owing and unprovided for, on the said 19th day of December last, executed and delivered to the said defendant James M. Hudson a deed of assignment, whereby he sold and transferred to the said Hudson the said stock of goods, notes, and accounts and other property for the consideration as therein expressed, of one dollar, but which said deed was in trust for the benefit of creditors, and required the said Hudson, as a trustee, to convert the said goods, notes, and accounts and other property, setting out an inventory thereof, into money, and pay off in full the said plaintiffs' debts, setting out by a schedule an exhibit of said debts, and that in case there should be any moneys left after paying the same, to pay off therewith any just debts which the said Moss & Bell might be owing. All of which will appear by reference to the said deed of assignment and exhibits thereto, copies of which are herewith filed marked Exhibit A and made a part hereof.

And they allege that said James M. Hudson accepted the said
5 trust, and on the 21st day of December, 1878, entered into bond in the sum of $40,000, which was double the estimated value of the property so assigned to him, with good and sufficient security as provided for in section 385 of Gantt's Digest and which bond was approved by the judge of the probate court of Jefferson county, in which the said Moss & Bell resided.

And on the same day the said Hudson filed in the office of the clerk of said probate court a complete inventory and description of the said goods, notes, and accounts, and other property so assigned; and also filed with said inventory and bond in the probate clerk's office a duplicate of said deed of assignment, and thereupon entered upon the duties of his trust, having the said goods, notes, accounts, and other property in his possession.

And the said plaintiffs further allege that about the first of September last, 1878, the said defendants, McGehee, Snowden & Violett, claiming that the said Moss & Bell were indebted to them in a large sum of money, commenced a suit against them in this court, and on the law side thereof, and such proceedings were had in this court thereon that said Mc-
6 Gehee, Snowden & Violett recovered by the consideration and judgment of the court, on the 21st day of December, 1878, against the said Moss & Bell the sum of $10,992.50 and costs. That a portion of said claim of said McGehee, Snowden & Violett, upon which such judg-

ment was rendered, was contested by the said Moss & Bell, and other parts of the same were provided for and secured to them by the transfer to them of collaterals of the cash value of about $2,000, and which the said McGehee, Snowden and Violett still retain. That the said judgment remaining unpaid, as they allege, they, the said McGehee, Snowden & Violett, acting by and through the Hon. U. M. Rose, who is their agent and attorney at Little Rock, caused execution to be sued out on the said judgment, bearing test the 12th day of January, 1879, which said execution coming to the hands of the said defendant James Torrans, United States marshal as aforesaid, he, the said Torrans, acting, or claiming to act under and by virtue of said execution, took possession of all of said goods and other property but not of the said notes and accounts, the same so being in the possession of the said Hudson, as trustee as aforesaid,
7 and levied or pretended to levy the said execution thereon, putting the said Hudson out of the possession thereof and also out of possession of the storehouse in which the said Hudson had the said goods stored, and the said Torrans, as such marshal, has ever since been and now is in the possession of the same, and is about to advertise and sell the same at public auction to pay the said judgment upon which his said execution was issued; and the plaintiffs allege that the said goods, at the time of the said pretended levy, was in law and equity the property of the said Hudson, in trust for the payment of the said plaintiffs' said debts, and were not the property of the said defendants in the said execution, and the said marshal wrongfully holds the said goods. That after the seizure of the said goods by the said marshal, Torrans, he proceeded to take an inventory thereof and to have the same appraised for the purposes of said execution, and the same were appraised at the sum of $6,716.24, as will appear by reference to a copy of such inventory and appraisement now on file in the marshal's office.

And they further allege that said trustee, Hudson, declares and refuses to take steps to recover the said property, or to move for a trial of
8 the right of property in this court, because, as he alleges, he is unable to give the bonds and security required by the statutes of Arkansas as a prerequisite to such remedy or remedies, and that he is unwilling to take upon himself the responsibility or incur the liability involved in the execution of such bonds.

In consideration of the premises, the plaintiffs pray process of this court against each of the said defendants named in this complaint, and that your honor grant said plaintiff an injunction against said defendants, James Torrans and said McGehee, Snowden, and Violett, temporarily preventing them, their agents and attorneys, from interfearing with the said property set forth in said assignment, or in any manner disturbing said property in said trust, and that upon due bond being given for such injunction, that said property be restored to said trustee, and that said trustee be allowed to proceed with said trust, or that a receiver be appointed to take possession and sell the goods under the orders of this court, and hold the proceeds subject to its orders, and that, on a final hearing, that said injunction be made final, the said assignment be declared valid. And for all further

and general relief necessary and consistent with equity in the
9 premises; and as in duty bound, plaintiffs will ever pray, &c.

M. L. BELL, M. L. JONES, AND
CLARK AND WILLIAMS,
Att'ys for Pl'ffs.

Filed February 5, 1879. Ralph L. Goodrich, clerk.

Which Exhibit A is as follows:

STATE OF ARKANSAS,
County of Jefferson:

This indenture, made and entered into on this the nineteenth day of December, A. D. 1878, by and between James C. Moss and John S. Bell, merchants and partners doing business at Pine Bluff, in the County of Jefferson and State of Arkansas, under the firm name and style of Moss & Bell, parties of the first part, James M. Hudson, of the same county and State, party of the second part, in trust for the uses and purposes hereinafter set out, witnesseth:

That for and in consideration of the sum of one dollar this day in hand paid to the said parties of the first part by the said party of the second part, and for divers other good and sufficient considerations moving
10 the said parties of the first part hereto, the said parties of the first part do hereby grant, bargain, sell, and convey, assign and transfer to the said party of the second part the following personal property, to wit:

All of stock of goods, wares, merchandise, groceries, stores, hats, boots, cloths, clothing, shoes, notions, estate, effects, notes, stocks, credits, claims, demands, &c., belonging, relating, or in anywise or manner appertaining to the mercantile business of the said parties of the first part, at the said city of Pine Bluff, as the same more fully and particularly appears from an inventory or schedule of the same hereto attached, marked A, and made a part of this instrument, together with the books of account of every kind relating to the said business of the said parties of the first part, to have and to hold the same unto the said party of the second part, in trust, for the purposes and consideration herein set out, and to his heirs and assigns forever.

The intention and design of this conveyance is as follows:

The said parties of the first part are justly owing and indebted as follows:

To the Dunham Manufacturing Company of St. Louis, Mo., in the sum of sixty-nine dollars.

11 To Hudson Brothers, of St. Louis, Mo., eighty-one and $\frac{18}{100}$ dollars.

To W. S. Bruce & Co., of Memphis, Tenn., in the sum of twenty-five and $\frac{10}{100}$ dollars.

To McCombs, Caruth and Burns, of St. Louis, Mo., in the sum of two hundred and sixteen $\frac{82}{100}$ dollars.

To A. E. Filley, of St. Louis, Mo., ninety-six $\frac{83}{100}$ dollars.

To J. B. Wilder & Co., of Louisville, Kentucky, in the sum of two hundred dollars.

To J. W. Morrill & Co., of Louisville, Kentucky, in the sum of one hundred and eighteen $\frac{98}{100}$ dollars.

To Smith & Zeigler, of New Orleans, La., in the sum of two hundred and seventy-four $\frac{8}{100}$ dollars.

To Hainey & Heath, of Louisville, Kentucky, three hundred and sixty-five $\frac{50}{100}$ dollars.

To E. S. Jaffray & Co., of New York, N. Y., the sum of five thousand four hundred and eighty-one $\frac{30}{100}$ dollars.

To W. A. Ransom & Co., of New York, N. Y., the sum of eight hundred and eighty $\frac{75}{100}$ dollars.

To S. W. Venable & Co., Richmond, Virginia, the sum of two hundred and twenty $\frac{85}{100}$ dollars.

To A. Low & Co., of Louisville, Kentucky, eight hundred and eighty-eight $\frac{16}{100}$ dollars.

To Appleton, Noyes & Maud, of St. Louis, Mo., the sum of seventeen hundred and eighty-seven and $\frac{14}{100}$ dollars.

To W. H. Kellogg, St. Louis, Mo., in the sum of twelve hundred and two $\frac{02}{100}$ dollars.

12 To. Todd, Brown & Co., of St. Louis, Mo., the sum of two thousand seven hundred and seventy $\frac{86}{100}$ dollars.

To Watkins & Gilliland, St. Louis, Mo., the sum of three hundred and sixty and $\frac{77}{100}$ dollars.

To Anderson, Starr & Co., of New York, N. Y., the sum of two hundred and eleven and $\frac{53}{100}$ dollars.

To John Thomas & Co., of Louisville, Kentucky, in the sum of three hundred and thirteen $\frac{85}{100}$ dollars.

To Breckenridge, Hitchcock & Co., of St. Louis, Mo., the sum of five hundred and seventy-four and $\frac{06}{100}$ dollars.

To Hartwell & Chambers, of New Orleans, La., the sum of three hundred and ninety-five $\frac{13}{100}$.

To Firstenheim & Weelford, of Memphis, Tenn., in the sum of three hundred and twenty-three $\frac{30}{100}$ dollars.

To Met. L. Jones and M. L. Bell, of Pine Bluff, Ark., five hundred dollars.

Now, the indenture as aforesaid is as follows: To secure the payment of the said indebtedness to the said parties above described as creditors of the said parties of the first part, and to pay them out of the property aforesaid herein conveyed, as far as the same will extend, and if the same overpays the said parties herein preferred and provided for, then to pay share and share alike any other indebtedness that the said parties of the first may owe to any other creditors out of the surplus thereof;

13 but the said above debts particularly named by name and amount shall be first satisfied before any other creditor is paid anything out of said property or the proceeds thereof.

The said parties of the first part have this day delivered all of said property herein conveyed to the said party of the second part for the purposes aforesaid; and the said party of the second part shall, and he is hereby empowered to, proceed to sell and dispose of all of said property for cash, as he shall deem advisable and right, and to this end to use his own discretion, subject to the supervision of the creditors, and to collect and receipt for all the claims and demands herein transferred, and to conduct and transact all of the business as he may deem proper in the exercise of a sound discretion and as he shall deem most advisable for the benefit of

creditors and this trust, and he shall have power to appoint such assistants, agents, and attorneys as in his judgment the same may be necessary to enable him to fulfill this trust, and he shall apply the proceeds of this trust:

I. To the expenses of this trust, including just commissions to such trustee.

II. To the payment of the certain specified creditors herein provided for in preference, &c.

III. To divide the residue among all the other creditors of the
14 said parties of the first part pro rata.

Given under our hands and seals this the day and date in this behalf above written.

MOSS & BELL. [SEAL.]
By J. C. MOSS. [SEAL.]
[SEAL.]

I accept the above trust.

JAMES M. HUDSON.

We accept the provisions of the above trust.

E. S. JAFFRAY & CO,
By BELL & ELLIOTT, *Att'ys.*

STATE OF ARKANSAS,
County of Jefferson:

On this day came before me, G. W. Prigmore, clerk of the circuit court for the county aforesaid, J. C. Moss, of the firm of Moss & Bell, to me well known as the person whose name appears upon the foregoing instrument of writing, and stated that he had executed the same in the firm name for the consideration and purposes therein mentioned and set forth, and I do so certify.

Witness my hand and seal of said court this 19th day of December, A. D. 1878.

[SEAL.]

G. W. PRIGMORE, *Clerk.*
GEORGE B. ALLIS, *D. C.*

15 Attest: G. W. Prigmore, clerk, G. B. Allis, d. c., Schedule Exhibit A.

BILLS RECEIVABLE.

J. T. Watts	23 95
H. K. White	34 85
G. M. Smith	158 35
W. P. Waddell	42 19
D. M. Crockett	6 20
A. Waldrope	45 39
W. A. Braden	27 20
J. A. Ashcraft	31 10
Read Fletcher	87 82
Spencer Coleman	26 50
J. T. Chege	24 64

B. F. Scallion	38 57
J. C. Schultz	9 45
W. B. Jeffries	28 21
David Louis	25 00
A. J. Hudson	30 66
L. K. Lockheart	12 25
R. J. Futch	105 75
W. L. Frazee	51 91
J. M. Pearce	15 77
R. J. Futch	60 00
W. D. Adams	29 00
R. G. Merony	44 00
C. M. Gentry	24 20
J. F. Crump	40 75
Jordan M. Lindon	25 00
M. Corrie	35 00
P. Murphy	35 89
E. B. Waddell	21 51
W. H. Thornton	37 00
Jasper J. Wilson	30 29
William Rutledge	77 00

16 Attest: G. W. Prigmore, cle'k, G. B. Allis, d. c. Schedule Exhibit A.

A. J. Hudson	278 64
C. A. Williams	9 12
J. M. Ballard	8 75
J. B. Blankanship	60 00
R. F. Cuthberton	52 20
J. D. & N. H. Nelson	52 00
J. A. White	153 54
W. A. Pickett	9 60
	$1,987 50
Am't personal %s hereto attached	12,670 25
" stock as per inventory	7,266 25
Total am't assets	$21,924 00

PERSONAL ACCOUNTS.—OPEN.

J. B. White	28 95
J. H. Heinly	6
E. Cuthbertson	10 05
Sol. Owen	5 95
W. A. Noel	10 52
M. J. Williams	8 78
W. T. Clifton	16 35
J. A. Davis	31 42
J. W. Neice	9 30
W. T. Hearn	10 90

Read Fletcher	4 50
Jim Cooper	17 27
W. H. Browning	15 13
William Wallace	7 50
Thomas Carr	20 30
A. Vogal	23 92
Frank Scallions	2 00

17 Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.

C. J. Bean	18 25
U. M. Lybrand	50
Newt. Robinson	78 82
A. C. Caldwell	8 21
D. I. Powell	2 40
Geo. Caldwell	3 78
Verge Goodlow	5 00
J. C. Gibson	6 55
B. H. Dalky	5 40
Dan. Williams	43 40
Sam. Jackman	9 10
N. H. Vorrell	14 48
Jack Coleman	7 40
C. A. Nichol	10 90
A. W. Massey	7 68
Nathan Smith	5 50
J. W. Watkins	4 25
P. E. Bush	2 62
H. F. Nichel	29 15
T. R. Jenkins	20 40
T. B. McCord	2 95
Jesse Hermon	18 01
J. S. Bryant	18 30
Ben. Scott	3 58
W. W. Cure	16 65
E. McLendon	26 75
N. L. Rigers	9 40
I. N. Pearce	50
D. Mays	15 00
Josh Thompson	36 55
J. E. Mitchell	28 20

18 Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.

Bob Powers	10 14
H. A. Raigh	8 61
M. A. Watkins	24 73
C. A. Anderson	7 70
M. Corrie	3 15
R. Crimp	5 65
Sam. McGehe	15 00
Mary England	2 75
James Hester	1 25

J. C. Lester	14	35
Thos. H. Hampton	4	00
J. J. Wilson	1	50
Z. A. Ganson	15	66
N. F. Reed	1	00
Geo. Evans	10	85
J. L. Carl	30	17
A. C. Melton	6	50
J. J. May	2	21
A. B. Craigh	4	23
Tom Bowden	1	15
J. J. Norton	31	00
John Yancy	3	00
A. B. Childers	666	54
E. B. Waddell	26	34
A. H. Mossey	34	00
John Clegg	32	89
B. F. Culpeper	77	00
Noah Coker		50
R. F. Kendall	260	25
Burgess Neirls	250	18
Willis Jenkins	393	56
Jno. Noble	107	76
19 T. H. Stewart	593	39
Ed. Kendall	203	30
J. C. Thompson	206	67
William Regely	56	15
Lee Williams	17	12
H. H. Jenkins	68	20
J. A. Owen	1	20
J. E. Stewart	1	80
Phil. Aljoe	44	31
Bob Trent	207	30
Allen Fergurson	257	35
Dan'l Lewis	17	35
Cumbry & Bell	113	75
Bob Green	54	95
N. J. Nest	20	06
Spencer Coleman	155	19
Martin Jones	69	20
A. M. Collins	16	55
Susy Husbands		35
M. B. Nelson	117	60
Thomas Olbort	47	88
Jim Cartwright	121	62
A. A. Hall	7	10
J. D. Culpeper	23	96
T. M. Embry	11	42
Jno. Thomas	8	65
J. D. Tructs	9	75
J. B. Searcy	2	50

J. J. Lybrand	28 65
Chas. Clegg	17 35
S. D. Keen	14 90
Reub. Dawson	14 00

20 Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.

G. H. Grey	11 48
Leno Allen	25
M. C. Cogbill	56 04
J. L. Bowley	21 30
Lee White	1 44
Jno. Worthen	23 97
Sam. Clay	59 79
Warren Hughes	61 10
Halt Haskell	84 60
Sam. Anderson	64 48
Thos. Harper	15 12
Butler Holmes	65 45
Mose Lowell	78 01
Ben. Gillipsie	41 98
Eljah Brown	47 71
Jessie Hester	16 83
G. L. White & Bro	6 50
W. A. Savage	11 50
A. Wallace	11 00
Wm. Johnson	253 99
J. C. Blakely	5 57
Henry Holines	21 27
J. B. Bryant	1 35
S. J. Treadwell	1 25
J. D. Wilson	2 31
B. F. Morgan	71 50
John Bussey	5 65
H. Beam	3 00
M. Perry	1 75
J. L. Lawson	50
J. H. Keith	14 38
J. T. St. John	3 65

21 Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.

James Turner	5 35
J. F. Reap	8 85
W. J. Montgomery	6 00
W. B. Jeffries	11 00
Roane & Begely	21 50
W. C. Nunn	11 74
M. Tacker	10 45
H. H. Barfield	7 12
C. D. Nixon	5 25
G. A. Terry	60 27
T. A. Towler	13 17

Jake Beardon	3	00
James Mossy	4	04
Prof. Jordan	19	65
S. N. Tind	1	00
Wm. Hobson	2	65
C. J. Touchstone	3	50
J. R. McMilliams	15	77
Abe Bellowsby	3	75
T. G. James	5	65
J. M. Sinclair	1	50
Jno. T. Stepp	30	15
J. W. Johnson	4	94
Cooper Eaton	23	50
Jno. H. Millston	1	25
Sam. Thomas	2	50
H. G. Williams	20	81
Jno. McCullough	28	12
J. H. Alethey	10	00
N. J. D. Vernon	14	63
J. S. Thomas	12	57
Marcus Allen	1	50
22 C. Roane	7	90
McH. Williams	21	50
M. Rena	62	25
J. Goodman	4	50
Jno. Denton	10	20
A. N. Gavin		75
L. H. Oliver	52	20
Wm. Hanly	1	50
J. B. Beville	9	41
Jesse Glover	6	98
Corry Brown		40
D. Robinson	4	55
C. H. Caldwell		50
J. H. Jenkins	19	15
Wm. Scott	7	25
Joe Davis	11	40
Wm. Hollis	10	00
I. M. Powell		50
D. Studdard		75
Josh. Kellum	9	00
H. Brewer	22	15
J. D. Boyt	6	52
H. C. Doley	7	54
Tom. McCling	5	74
Hill & Hett	17	00
M. S. Lawson	49	76
M. P. Waddell	37	04
J. D. Tull	21	06
A. C. Rhodes	130	33
G. S. Saunders	256	80
G. T. Green	5	25

23 Attest: G. W. Prigmore, clerk; H. G. Allis, d. c.

Henry Davis	16	41
Lee Jones	171	51
J. Carslile	4	45
Wm. Bell	20	00
W. C. Guest	19	71
R. A. McClang	1	50
C. Mingram	18	30
H. P. Johnson	32	30
R. N. Mossey	27	85
Phil. McCullough	18	85
Wiley McWilliams	18	85
E. T. Rouker	32	52
R. S. White	34	00
G. D. Turner	103	84
Chas. Loucton	167	78
Jerry Nichol	35	88
A. Watts	7	39
M. S. Williams	10	51
L. Tucker	33	95
Mary Gardner	14	71
J. M. McEvine	31	98
J. F. Hart	56	28
J. H. Davis	23	30
Steve Crook	25	00
T. J. Julian	28	71
Gibson Thomas	11	95
Sam. Crook	17	25
Bell Harlow	13	02
M. L. Nelson	11	35
L. D. Faulkner	2	86
Mrs. Sue Corrall	14	05
Gillipin & Bro		50

24 Attest: W. G. Prigmore, clerk; G. B. Allis, d. c.

Wm. Bradwell	2	00
——— Hondethe		75
J. F. Ritchie	25	75
Wiley Wade		25
J. Jordan	5	00
Sam. Rial	7	50
Taylor, C. & Co	2	00
Joe Merrill	38	55
T. P. Angell	4	70
Robt. Cuthbertson	47	58
W. C. Neight	2	50
W. P. Stevens	30	50
J. N. Kendall	33	10
M. G. Furlong	5	10
Lewis Clegg	11	85
Wm. Luckey	40	44

Wm. Glidewell	51	10
N. B. Holmes	2	00
I. Godden	17	60
Wm. McCarty	13	93
W. T. Orton	3	00
Harris Place	144	04
J. H. Spivy	46	65
Gus Hampton	49	30
W. A. Cuthberston	109	25
Mary Taylor	185	81
Henry Crawford	13	89
Thos. McCaskey	2	95
O. K. Hall	3	80
G. H. Owen	15	40
J. G. Randolph	21	35

25 Attest: W. G. Prigmore, clerk; G. B. Allis, d. c.

M. W. McCracken	40	64
Roger Scudder & Co	16	50
R. V. McCracken	27	94
Mrs. McCord	2	00
I. M. Holcomb	1	25
Amos Reckman	21	31
Chas. Hickey	21	45
A. P. Harrelson	16	80
Dr. Ran Brunson	129	78
Bell & Boeage	1	86
B. F. Hammock	53	01
Jno. Bloom	74	50
Joe Neeley	8	90
Sam. B. White	4	35
N. McGehe	6	50
Sam. Lefter	20	65
Cato Marshal	4	50
T. J. Wise	5	00
Ladies' Aid Society	15	34
I. N. Jones	5	73
B. F. Fall	11	37
J. M. Elliott	1	60
Jno. B. King	2	20
E. B. Houston		25
W. H. Holland	11	10
Thos. Chambers	6	50
Joe Dorby	5	49
M. K. Hocker	8	50
Dave Mills	45	87
Jenks Wilson	1	50
G. W. Prigmore		40

26 Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.

Mack Hammett		80
M. M. Dodds	32	50

J. T. Simmons	6 23
Pat. Murphy	67
Geo. Warren	10 50
S. R. Lawhorn	35 56
N. W. Hampton	7 25
Geo. Rolls	19 15
R. H. Hightower	4 10
Bell & Bell	139 00
J. S. Rhodes	6 97
J. C. Simms	3 85
N. P. Kingston	33 04
Frank Haywood	2 50
J. T. Keizer	30 97
J. M. O. Pearce	45 29
R. A. Tucker	2 38
A. Wright	1 25
Jno. McGowan	12 50
Maurice Martin	6 90
Eliza Haskell	30 83
Dr. B. B. Martin	113 38
G. W. Smith	15 15
J. W. Hammocker	7 65
W. S. McCullough	6 50
J. M. Brunson	8 75
J. T. Pearce, sr	6 91
J. E. Acre	33 90
Geo. Cuthbertson	5 10
H. C. Sinclair	3 45
J. H. Brown	14 10
A. C Lockhart	47 75

27 Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.

Mrs. Lester	9 35
A. Dorrington	6 00
Wm. Turner	6 83
Ed. Price	88 00
T. A. Hill	282 87
Lee Hydrick	34 26
J. W. Simpson	20 00
W. K. Raimock	2 82
W. J. Adams	77 19
Abe Durden	52 00
Jacob Parker	10 50
J. Frank Tolson	35 94
Jno. Seymore	52 72
N. G. Wright	526 82
Calvin Thompson	66 95
A. B. Neutze	17 10
Gabe Martin	24 72
H. G. White	105 93
N. S. Harcrow	1 75

Mrs. Josephine Duvall	95	90
Bell & Nevills	344	18
Chas. Kendall	142	35
M. L. J. Lights	42	09
W. P. Lipscomb	2	00
Jones A. Taylor	40	03
M. A. White	161	16
S. R. Cockrill [341.53]	452	40
G. L. Blackwell	8	67
Dr. D. S. Mills	57	08
Jno. Smith	14	22
J. H. Tree	60	90
28 S. T. Halloway	84	20
Henry House	5	30
Peter Jackson	47	58
Wm. Scarlet	44	98
Woodson Withers	5	00
Jim Johnson	181	98
J. T. Barnes	9	00
H. N. Horman	28	30
Sam. Tredwell	4	00
Davis Miller	6	50
H. G. Katz	21	40
J. H. Stanley	4	40
Jackson Rucker	26	82
Fletcher Hudson	3	75
S. J. Musgrove	8	70
Robt. Crawley	29	53
A. Hampton	1	50
B. P. Griffin	42	25
J. M. Parnell	15	25
Jacob Light	8	75
M. A. Hudson	6	35
Sol. Oliver	239	61
L. M. Jackson	8	65
E. D. Tate	3	95
Edmund Jones	7	50
E. A. McMurtrey	167	44
J. M. Wallace	7	97
Saml. Roane	29	20
Ned Williams	549	23
Camlerlan P. Church	10	95
J. W. Pencks	1	10
Turner Jackson	218	18
29 Wm. Lemons	8	40
D. Saunders	2	00
Mrs. Hill	4	85
W. H. Nichol	90	75
Green Williams	5	45
Sam. Price	7	50
T. B. Little	3	75

W. S. Mitchell	25	12
Mrs. A. T. Owen	12	40
A. Nevills	8	30
Mrs. Ellen Lee	41	90
R. V. Boyt	6	93
Dan. Carroll	4	35
G. L. Boyt	21	50
Jim White	18	25
H. H. Hydrick	10	25
Levi Shields	3	35
Robt. Fuller	5	10
Jno. Taggart	24	95
Jno. Nevins, jr	17	88
D. H. Stanford	8	36
Mrs. Abe Flym	17	30
Amanda Washington	2	40
N. L. Taylor	10	45
L. G. Garnett	20	55
Peter Mosely	2	00
M. L. Bell	325	00
Young & Murphy	75	09
W. D. Harrison	29	03
Ed. Martin	8	00
Meyer Bros	9	00
T. B. Martin	146	48
30 H. W. Scull	1	25
T. R. Mitchell	9	52
Jake Fies	17	21
James W. Mitchell	18	08
Kite & Co	16	70
Wm. Harding	5	71
T. G. Smart	3	20
Jno. W. Johnson	12	78

INVENTORY STOCK, DEC. 16, 1878.

14	paregoric, 27	3	78
	Sapolio & turpelo	1	
	Worm candy	3	
8	pectoral bal'um, 36	2	88
3	hyanphosphorus, 72	2	16
2	arnica liniment, 62	1	24
9	Oulsur, 75	6	75
32	ext., 16	5	12
6	blue mass, 14		84
12	ink, 3		36
19	shoe polish, 11	2	09
16	envelopes, 1		16
	Mur. p'd	2	50
7	fo. pa., 25	1	75
2	sets knives & f'ks, 2.75	5	50
8	do. 66	5	28

2	do. 1.65		3 30
4	do. 1.15		4 60
4	do. 1.35		5 40
2	do. 1.92		3 84
31	9 balances, 25		2 25
	6 carv. knives, 14		84
24	mem. b'ks, 14		3 36
12	do. 5		60
6	do. 16		96
	G. caps		2
4	bl'k'g brushes, 46		1 84
	Lamp wicks		1 75
45	lamps, 25		11 25
30	" burners, 30		9 00
24	cot. cards, 30		7 20
15	doz. black'g		5 00
34	b'k'g brushes, 15		5 10
25	curry-combs, 10		2 50
26	white-wa. brushes, 40		10 40
9	p'r belts, 20		1 80
7	coc'a dippers, 35		2 45
	Tacks		50
2	doz. gimlets		1 00
1	" mollasses gates		3 65
4	coffee mills, 27		1 08
41	bradoons, 10		4 10
3	hats, 2.50		7 50
3	" 2		6 00
5	" 65		3 25
4	" 75		3 00
4	" 3		12 00
2	" 2.20		4 40
3	hats, 2.50		7 50
2	" 2.00		4 00
2	" 2.26; 3 @ .65		6 35
32	Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.		
3	hats, 3.30; 3 @ 75		18 15
7	" 73; 10, 60; 2, 2.50; 3, 2.65		24 06
8	" 90c.; 3, 30; 2, 1.65		11 40
4	" 60; 2, 3.50; 2, 3.00		15 40
3	" 3.00; 2 @ 2.00; 5, 80c		17 00
2	" 2.65; 5, 1.50; 5, 90		17 30
6	" 1.75; 4, 1.00; 4, 68		17 22
1	" 1.50; 10, 24c.; 8, 35		6 70
4	" 2.50		10 00
4	" 20; 5, 75; 4, 70		7 35
4	" 60; 4, 95; 9, 25		8 45
10	" 70; 6, 40; 4, 50; 4, 75		14 40
6	" 1.65; 6, 1.75; 2, 40		21 20
4	" 20; 3, 2.20; 5, 1.45		14 65

3	" 75; 18, 75; 12, 1.00	27 75
4	" 50	2 00
19	blueing, 9	1 71
42	" 6	2 52
11	cherries, 35	3 85
25	jelly, 10	2 50
7	salts, 25	1 75
4	preserves, 1.	4 00
12	br. peaches, 35	4 20
10	mustard, 25	2 50
25	str. bornis, 15	3 75
13	tomat's, 10	1 30
23	salmon, 35	8 05
22	corn, 11	2 42
26	peaches, 16	4 16
19	oysters, 5	95
11	" 10	1 10
13	pep. sauce, 7	21

33 Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.

8	pickles, 27	2 16
3	" 17	51
1	C. matches	4 40
10	gelatine, 18	1 80
10	b'k'g powd., 66	6 60
15	snuff, 35	5 25
1	C. do	9 50
92	do., 18	16 56
136	yeast powd., 22	29 92
1	preserves	64
9	" 1.25	11 25
55	sardines, 16	8 80
45	tobac., 60	27 00
5	sets tumblers, 27	1 35
9	st. dishes, 1	9
2	sets goblets, 55	1 10
2	do. 26	52
11	molas. stands, 35	3 85
18	seives, 18	3 24
5	trays, 25	1 25
3	do. 50	1 50
4	lb. tea, 75	3 00
41	lamp chimney, 7	2 87
5	bowls & pitchers, 1.50	7 50
4	" 25	1 00
49	dishes " 20	9 80
14	pitchers, 60	8 40
3	sets goblets, 26	78
14	lamps, 27	3 78
7	but. dishes, 65	4 55
14	sug. " 85	11 90

26	bowls, 15	3 90
34	Attest: G. W. Prigmore, cl'rk; G. B. Allis, d. c.	
16	sets plates, 40	6 40
32	soda, 3	96
	Tin ware	3
90	soap, 6	5 40
32	s'ks salt, 5	1 60
14	chambers, 85	11 90
46	bowls, 15	6 90
44	dishes, 35	15 40
19	pitchers, 10	1 90
3	½ b'x ra'sins, 1.42	4 26
5	¼ do. 72	3 60
1	do.	2 35
4	doz. toilet soap, 44	1 76
80	gal. crockery, 13	10 40
	Shoestrings	50
4	hatchets, 42	1 68
6	doz. hoes, 45	2 70
100	plow p'ts, 15	15 00
50	tobac., 61	30 50
30	" 38	17 40
30	" 50	15 00
1	show case & contents	35 00
1	do.	20 00
5	pr. shoes, 1.	5
6	do. 1.10	6 60
8	do. 1.20	9 60
6	do. 1.37	8 22
6	do. 1.20	7 20
1	do.	1 37
8	do. 2.50	20 00
6	do. 1.37	8 22
6	do. 2.	12 00
35	Attest: G. W. Prigmore, cl'k; G. B. Allis, d. c.	
3	pr. shoes, 1.75	5 25
5	pr. shoes, 3.	15
8	" 1.75	14 00
6	" 1.85	11 10
7	" 1.75	12 25
7	" 2.	14 00
6	" 2.	12 00
5	" 1.95	8 75
7	" 1.75	12 25
6	" 2.20	13 20
7	" 2.	14 00
6	" 2.25	13 50
2	" 3.00	6 00
6	" 1.75	10 50
5	" 1.75	8 75

5	"	2.20	11 00
5	"	2.	10 00
4	"	2.	8 00
4	"	1.75	7 00
7	"	1.75	12 25
6	"	2.	12 00
10	"	1.90	19 00
5	"	1.75	8 75
2	"	1.65	3 30
6	"	1.75	10 50
3	"	1.65	4 95
3	"	1.75	5 25
7	"	1.20	8 40
5	"	1.37	6 85
236 gals. molas., 38			89 68
20 sifters			2 80

36 Attest: G. W. Prigmore, cl'k; G. B. Allis, d. c.

5 chambers, 14	70
8 kegs, 65	5 20
3 doz. hames, 50	1 50
5 bridles, 3.	15 00
1 doz. b'k'ts	1
9 bu. s'cks, 75	6 75
2 p'ck measures, 50	1 00
1 ½ bu. "	40
65 gal. oil, 16	10 40
1,500 pork, 5	75
100 lb. bacon, 5½	5 50
315 hams, 12	37 80
Salt	1
221 lb. sugar, 8¼	18 23
120 coffee, 18	21 60
35 sugar, 11	3 85
150 do. 9	13 50
6 shirts @ 65	3 90
3 do. 1.10	3 30
4 do. 1.65	6 60
6 " 1.25	7 50
3 " 1.65	4 95
2 " 1.10	2 20
1 pr. drawers	2 00
5 " do. 60	3 25
6 " do. 2.	12 00
4 " do. 2.	8 00
5 " do. 82	4 10
6 la. vests, 45	2 70
6 " do. 41	2 46
490 dom'st., 72	36 75

37 Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.

800 domst., 5	40 00

347	do. 7	24	29
225	drilling, 9	20	25
150	osn'b'gs, 10	15	00
100	c. flan., 16	16	00
40	do. 15	6	00
62	" 9	5	58
1	p'r blankets	2	20
2	do. 6.05	12	10
1	do.	2	50
4	do. 3.12	12	48
3	do. 4.40	13	20
18	shawls, 3.75	67	50
3	do. 2	6	00
1	doz. neubias, 50	6	00
30	overshirts, 1.10	33	00
12	do. 1.10	13	20
7	balmorals, 2.20	15	40
2	ta. cloths, 1.65	3	30
2	p'r drawers, 82	1	64
6	shirts, 62	3	72
6	do. 1.28	7	68
4	do. 1.28	5	12
50	lin. fronts, 15	7	50
7	shirts, 1.28	8	96
5	do. 1.25	6	25
2	do. 82	1	64
7	do. 1.20	8	40
5	do. 1.65	8	25
4	do. 82	3	28
5	do. 1.00	5	00
5	do. 1.37	6	85

38 Attest: G. W. Prigmore, cl'k; G. B. Allis, d. c.

3	shirts, 2.00	6	00
10	shirts, 65	6	50
4	do. 82	3	38
3	do. 1.65	4	95
6	do. 55	3	30
3	do. 1.25	3	75
2	do. 1.90	3	80
6	do. 55	3	30
5	p'r drawers, 82	4	10
8	do. 55	4	40
3	la. vests, 1,25	3	75
4	do. 82	3	28
1	doz. po'k't-books, 22	2	64
4	" p'rl but's, 21		84
4	" " 16		64
6	" " 10		60
9	" " 13	1	17
6	box " 1.50	7	50
36	doz. " 21	7	56

36	" " 16	5	76
12	" thr'd, 75	9	00
100	towels, 25	25	
4	doz. p'k't-books	3	25
1	" neckties, ea., 14	1	68
12	" 20	2	40
12	hooks & eyes, 13	1	56
	Corset laces	1	
9	doz. napkins, 1.10	9	90
	Ass't. buttons	5	00
6	p'r gloves, 1.10	6	60
25	y'ds barage, 36	9	00

39 Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.

20	y'ds barage, 20	4	
6	doz. hose, ea., 60	43	20
72	" 25	18	
72	" 25	18	
6	p'r " 75	4	50
12	" " 12½	1	50
6	" " 22	1	32
12	" " 8		96
9	" " 75	6	75
4	" " 50	2	00
3	" " 22		66
2	" " 60	1	20
1	doz. braid	1	
	Ass't buttons	1	50
3	doz. floss, 50	1	50
68	p'r drawers, 41	27	88
3	overshirts, 1.25	3	75
14	do. 40	5	60
15	do. 1.10	16	50
22	do. 1.10	24	20
15	balmorals, 1	15	
14	quilts, 1.37	19	18
65	wa.-proof, 82	53	30
25	" 60	15	
431	linsey, 18	77	58
25	cass., 40	10	
20	linsey, 10	2	
20	chiveot, 22	4	40
125	gingham, 10	12	50
18	cass., 60	10	80
185	flan., 33⅓	61	67

40 Attest: G. W. Prigmore, cl'rk; G. B. Allis, d. c.

177	flan., 22	38	94
124	do. 40	49	60
40	do. 30	12	00
25	wa.-proof, 82	20	50
75	ta. lin., 82	61	50

65	do. 1	65 00
6	doz. t'rd, 35	65 00
65	y'ds j'anes (corsets) 10½	6 82
90	dress goods, 22	19 80
50	do. 20	10 00
40	do. 13	5 20
25	do. 22	5 50
30	do. 18	5 40
27	do. 17	4 59
40	cheviot, 30	12 00
102	opera flan., 36	36 72
60	plaids, 22	13 20
1	doz. cuffs & collars, ea., 25	3 00
8	" 25	2 00
12	½ hose, 40	4 80
6	" 12	75
59	y'ds fringe, 15	7 50
15	doz. hair-pins, 1.20	18 00
	Elastic	2 00
6	p'r hose, 75	4 50
12	" 15	1 80
6	" 10	60
24	" 12½	3 00
12	" 32	3 84
	Pearl buttons	4
12	½ hose, 32	3 84
6	" 8	48

41 Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.

6	pr. ½ hose, 27	1 62
6	" 40	2 40
12	" 10	1 20
150	bx. collars, 13	19 50
	Braid	4 50
20	corsets, 1.10	22 00
17	do., 75	12 75
18	pr. suspenders, 36	6 48
36	do. 20	7 20
	Neckties	5
75	bu. fringe, 10	7 50
221	floss, 30	7 20
100	braid, 6	6 00
8	pr. kid gloves, 1.10	8 80
1	gross buttons	1 50
25	b'lts velv. rib., 1.75	43 75
2	gro. rice buttons, 40	80
8	pcs. 30 prints, 5	40
108	do. 5	5 40
25	" 5	1 25
1,080	" 5	54 00
120	duck, 12	14 40

4 stripes, 9		3 60
100 do. 13		13 00
32 tick, 20		6 40
200 " 13		26 00
140 stripes, 9		12 60
75 tweeds, 1.50		112 50
100 " 80		80 00
600 j'anes, 35		210
4 suits, 9.90		39 60
42 Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.		
3 suits, 11.50		34 50
1 "		11
1 "		14 90
3 " 6.50		19 50
5 " 7.50		37 50
1,050 calico, 5		52 50
6 suits, 6.60		39 60
8 " 3.50		28 00
26 dress coats, 8.		208 00
19 " 4.		76
72 vests, 2.		144
47 pants, 3.50		164 50
39 " 2.		78 00
45 " 1.50		67 50
1 "		9 90
3 vests, 7.		21 00
7 coats, 10.		70 00
9 " 5.		45 00
7 " 3.		71 00
110 brogans, 1.25		137 50
50 " 80.		40 00
46 " 1.		46 00
60 " 1.30		78
11 blls. twine, 1.90		20 90
13 la. hats, 50		6 50
Ass't buttons		1 50
3 doz. hks. yarn, 60		1 80
24 prs. gloves, 23		5 52
79 " chi. hose, 22		17 38
10 doz. roaching, 25		2 50
12 pr. hose, 37		4 44
43 Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.		
12 pr. ½ hose, 16⅔		2
3 b'lts edg., 1.10		3 30
7 yds. roaching, 20		1 40
8 doz. cot., 60		4 80
3 yds. roaching, 27		81
16 bx. coll's, 13		2 08
Roaching		1 50
6 pr. gloves, 55		3 30

12	" " 23	2	76
12	" " 82	9	84
12	" " 80	9	60
24	" " 28	6	72
1	la. hat	2	75
3	bu. rib., 25		65
30	yds. alpac., 82	24	60
10	" " 93	9	30
20	" cass., 82	16	40
50	" " 38	19	00
20	" " 1.10	22	00
42	" " 45	23	40
35	alpac., 82	28	70
35	do. 40	14	00
28	do. 45	12	60
26	flan., 27²	7	75
90	do. 46	41	40
52	cot. goods, 13	6	76
40	do. 15	6	
50	cheviot, 14²	7	25
125	ginghams, 16	20	00
49	alapac., 51	24	99
47	do. 38	17	86
30	selecim, 9	1	80
44	Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.		
10	plaids, 50	5	00
2	sprnails, 3.85	7	70
1	do.	1	25
542	dom'st., 5²	23	76
105	pillow c., 15	15	75
3	pr. drawers, 1.65	4	95
½	doz. shirts, 77	4	62
3	pr. drawers, 1.65	4	95
3	shirts, 1.77	5	21
12	do. 190	22	80
100	lb. sugar, 8	8	
65	h. c'll's, 1.10	71	50
106	blind bridles, 1.10	116	60
5	pr. breeching, 3.85	19	25
23	bridles, 1.25	28	75
9	" check reins, 1.55	13	95
22	bk. bands, 30	6	60
8	stirrup leathers, 65	5	20
6	girths, 22	1	32
6	do. 22	1	32
1	pr. blankets	6	05
1	do.	2	88
1	do.	6	30
1	do.	6	05
2	valises, 4.40	8	80
1	trunk	4	

1	do.	4	30
26	yds. silk, 60	15	
25	" " 1.25	31	25
25	" " 1.10	27	50
6	parasols, 1.75	10	50
45	Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.		
12	yds. fringe, 60	7	20
12	do. 41	4	92
11	nubias, 40	4	40
	Zephyr		50
20	jackonett, 20	4	
20	do. 35	7	
20	do. 40	8	
20	do. 11	2	20
20	do. 13	2	60
20	do. 27	5	40
20	swiss, 24	4	80
20	do. 16	3	20
32	do. 55	17	60
25	do. 49	12	25
60	tarlton, 18	10	80
50	nainsook, 22	11	00
20	do. 24	4	80
20	lawn, 22	4	40
55	do. 22	12	10
20	do. 35	7	00
13	nainsook, 27	3	51
10	muslin, 38	3	80
5	do. 22	1	10
10	do. 27	2	70
18	jackonet, 27	4	86
15	jackonet, 39	5	85
7	yds. jackonet, 33	2	31
	Embroidery	25	
12	lawn, 27	3	24
25	do. 12^2	3	13
40	do. 15	6	
46	Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.		
30	lawn, 13	3	90
25	do. 20	5	
20	do. 33	6	60
35	do. 20	7	
5	robe goods, 22	1	10
15	lawn, 27	4	05
15	do. 30	4	50
3	do. 50	1	50
21	do. 77	16	17
5	do. 34	1	70
4	do. 99	3	76
25	selecier, 12^2	3	13

	Hosiery	1	50
90	chambray, 25	22	50
240	cambric, 8	19	20
37	sheeting, 27	9	99
35	do. 27	9	45
120	crash, 9	10	80
230	dom'st., 9	21	70
150	do. 6	9	
42	doz. thread, 55	23	00
	Show-c. & contents	75	
8	hanks flax, 10		80
	Hosiery	1	44
125	doz. pearl butt's, 10	12	50
3	gro. " 50	1	50
4	pr. gloves, 22		88
6	" do. 25	1	50
12	" do. 16	1	92
6	" do. 55	3	30
12	" do. 27	3	24
24	" do. 25	6	00
47	Attest: G. W. Prigmore, clerk; G. B. Allis, d. c.		
12	pr. gloves, 20	2	40
4	" do. 40	1	60
24	" do. 75	18	
6	" do. 18	1	08
15	doz. hdkfs, ea. 20	36	
12	pr. gloves, 16	1	92
11	" do. 18	1	98
11	" do. 90	9	90
11	" do. 27	2	97
11	" do. 50	5	50
11	" do. 55	6	05
12	" do. 82	9	84
9	b'lts tri'mg 2.	18	
6	pr. plow shoes, 1.10	6	60
25	do. 1.10	27	50
20	do. 1.75	35	00
20	do. 1.25	25	
18	do. 1.10	19	80
50	polkas, 1.10	55	
145	do. 1.00	145	
36	boots, 3.	108	
33	do. 1.50	49	50
6	do. 4.40	26	40
7	do. 4.40	30	80
5	do. 5.	25	00
3	do. 2.75	8	25
6	cloth shoes, 2.	12	
9	do. 1.80	16	20
19	saddles, 6.66	126	54
8	do. 5.10	40	80
910	lb coffee, 18	163	80

48 Attest: G. W. Prigmore, cl'k; G. B. Allis, d. c.

780	℔ coffee, 14	10 92
870	bag, 11²	100 05
17	mackerel 1.10	18 70
605	℔ lard 7	42 35
23	bkts. do. 1.65	21 45
22	bbls. flour, 5.20	114 40
330	soap, 5²	18 15
270	do. 6	16 20
270	do. 4²	12 15
360	do. 5²	19 80
3	C. tomato, 2.20	6 60
6	" oysters, 3.08	18 48
7	" 1.20	8 40
150	candy, 12	18 40
138	starch, 5	6 90
1	" snuff	9 50
88	" crackers, 8	7 04
27	" " 4²	1 32
1	" salmon	8
1	" br. peaches	3 65
1	" " cherries	3 65
2	box bluing, 2.28	4 56
300	℔ soda, 5²	16 50
1	C. lye	3 80
1	" sardines	13 50
21	kegs nails, 2.90	60 90
2	" mackerel, 3.10	6 20
6	brooms, 20	1 20
4	bkts., 12	48
5	c. bkts., 35	1 75
	1 box to. cherries	10
49	4 cloaks, 12.50	50 00
	150 ℔ tobac', 50	75 00
		$7,266 25

STATE OF ARKANSAS,
County of Jefferson:

I. George W. Prigmore, clerk of the circuit court, and ex-officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 19' day of December, A. D. 1878, at o'clock m., and the same, together with the certificate of acknowledgment thereto, is duly recorded in record book "S" series, page 245 to 259, inclusive.

In testimony whereof I have hereunto set my hand and affixed the seal of said court on this 30th day of Jan'y, 1879.

[SEAL.]

G. W. PRIGMORE,
Clerk & Ex-Officio Recorder.
GEO. B. ALLIS, *D. C.*

Filed February 5, 1879. Ralph L. Goodrich, clerk.

50 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the fourteenth day of October, anno Domini one thousand eight hundred and seventy-eight, at the United States court-room, in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on February 5, 1879.

E. S. JAFFRAY & CO. ET AL.
vs. } 307.
McGEHEE, SNOWDEN & VIOLETT ET AL.

And now, on this day, come the said plaintiffs, by Clark & Williams and Net. L. Jones, their solicitors, and the defendants, McGehee, Snowden & Violett, by U. M. Rose, their solicitor, and by consent of parties it is ordered as follows: That the defendant James Torrans, as marshal, be enjoined from selling the goods mentioned in the plaintiffs' bill until the further order of the court in the premises, and that James M. Hudson be, and he is hereby, appointed receiver in this cause; said receiver shall give bond as such in the penal sum of seven thousand dollars (7,000), to the approval of the clerk of this court, and upon the approval of such bond the defendant Torrans will deliver to said receiver all the goods and property by him levied upon and now in his hands or custody; and the said receiver shall thereupon proceed to sell said stock of goods at private sale for cash at the best prices that can be obtained therefor, and for the best interests of the creditors.

And on February 11, 1879, as follows:

Comes James M. Hudson, the receiver herein, and files his bond as such receiver, and the same is approved.

Which bond is as follows:

Whereas in the above cause it has been ordered by the judge of the said circuit court in vacation in the above cause that James M. Hudson be appointed receiver of the goods, wares, and merchandise in the said action, and that he give bond in the sum of seven thousand dollars as such receiver in this case, now we, Gabe Meyer and B. D. Williams and M. L. Bell, undertake and promise to McGehee, Snowden and Violett
51 and others, defendants aforesaid, in the sum of seven thousand dollars, that the said James M. Hudson shall faithfully discharge the duties of said receiver in this action and obey the orders of the court herein.

Given under our hands and seals this the eighth day of February, A. D. 1879.

JAMES M. HUDSON. [SEAL.]
G. MEYER. [SEAL.]
M. L. BELL. [SEAL.]
B. D. WILLIAMS.

STATE OF ARKANSAS,
County of Jefferson:

We, Gabe Meyer and B. D. Williams, respectively state on oath that

we are residents of said State of Arkansas, and that we are each respectively worth seven thousand dollars, and have each in said State seven thousand dollars' worth of property subject to execution above our liabilities and exemptions.

G. MEYER.
B. D. WILLIAMS.

Sworn to and subscribed before me this February 8, 1879.
52 In testimony whereof I have hereto set my hand and official seal.

[SEAL.] BENJ. F. FALL,
U. S. Commissioner, E. D. Ark's.

Com'r's fee, 50c., pd. Benj. F. Fall, com'r.
Bond approved Feb'y 11, 1879.

RALPH L. GOODRICH, *Clerk.*

Affidavit of receiver.

I, James M. Hudson, the receiver in the above case, do solemnly swear that I will faithfully discharge the duties of receiver in such cause and obey the order of the court in the aforesaid action.

JAMES M. HUDSON.

Sworn and subscribed before me, Feb'y 8, 1879.
In testimony whereof I have hereto set my official seal.

[SEAL.] BENJ. F. FALL,
U. S. Commissioner, E. D. Ark.

Com'r fee, 50c., pd. Benj. F. Fall. Filed Feb'y 11, 1879. Ralph L. Goodrich, cl'rk.

53 UNITED STATES OF AMERICA.
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 14th day of April, anno Domini one thousand eight hundred and seventy-nine, at the United States court-room, in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on April 21, 1879, as follows:

Come the defendants by U. M. Rose, their solicitor, and filed herein their demurrer to the bill.

Which demurrer is as follows:

Defendants McGehee, Snowden & Violett demur to the original bill herein, because they say there is no equity in it.

U. M. ROSE.

I certify that I believe that the above demurrer is well founded. April 21, 1879.

U. M. ROSE.

Filed April 21, 1879. Ralph L. Goodrich, clerk.

And on May 26, 1879, as follows:

Came on this day said defendants, by U. M. Rose, their solicitor, and the court being now sufficiently advised in the premises, it is now considered that the demurrer of defendants to the original bill herein be, and the same is, sustained, because the deed of assignment made on the 19th day of December, 1878, by James C. Moss and John S. Bell, doing business under the firm name of Moss & Bell, to James S. Hudson, of which a copy is filed with the plaintiffs' bill herein as an exhibit thereto, is void on its face, and that there is, therefore, no equity in said bill; and it is now ordered that the receiver herein pay unto this court within ten days from this
54 date all the money that has come to his hands as receiver herein, with his report of all sales made by him, and of the amount and values of all property remaining in his hands as such, and that this cause be retained for further directions.

And on May 27, 1879, as follows:

This day come Wm. H. Kellogg & Co., by Henderson & Caruth, their attorneys, and by leave of court strike their names from the record as parties plaintiff.

And on May 29, 1879, as follows:

And now on this day come the said plaintiffs, by Clark & Williams, their attorneys, and the said defendants, by U. M. Rose, their attorney, and the said plaintiffs pray an appeal from the judgment and decree of the court in this cause sustaining the defendants' demurrer to the plaintiffs' bill to the Supreme Court of the United States, which prayer for appeal is granted, and said appeal allowed. And the parties hereto concede that the property in controversy exceeds the sum of five thousand dollars in value.

55 And on June 9, 1879, the following proceedings were had:

Come the complainants, by Clark and Williams, esq's, their attorneys, and file herein their appeal bond; which is approved by the court and ordered to operate as a supersedeas.

Which bond is in the words and figures following, to wit:

Know all men by these presents that we, J. M. Hudson, Gabe Meyer, and V. D. Wilkins are held and firmly bound unto McGehee Snowden and Violett and James Torrans and James Hudson in the penal sum of ten thousand dollars ($10,000), for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 5th day of June, A. D. 1879.

Provided, however, and these presents are upon this express condition, that whereas the said plaintiffs in the above-entitled cause, E. S.
56 Jaffray & Co. et al., have prayed an appeal to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the eastern district of Arkansas, in a certain cause on the chancery side thereof, in which the said E. S. Jaffray & Co. et al. are plaintiffs and the said McGehee Snowden and Violett, James Torrans and James M. Hudson are defendants, in favor of said defendants:

Now, therefore, the condition of the above obligation is such that if the

said E. S. Jaffray & Co. et al., plaintiffs in said action and appellants, shall prosecute their said appeal to effect, and shall pay all costs and damages which may be adjudged against them if they shall fail to make good their said appeal, then this obligation to be void; otherwise to be in full force and virtue.

JAMES M. HUDSON. [SEAL.]
G. MEYER. [SEAL.]
V. D. WILKINS. [SEAL.]

Signed, sealed, and delivered in the presence of us:
MET. L. JONES,
JOHN ALLEN.

57 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Gabriel Meyer, do solemnly swear that I am a resident of Pine Bluff, in Jefferson County, in the State of Arkansas; that I am worth fifty thousand dollars beyond the amount of my just debts; and that I have property liable to execution in the State of Arkansas of the value of fifty thousand dollars ($50,000).

G. MEYER.

Sworn to and subscribed before me, a commissioner of the circuit court of the United States for the eastern district of Arkansas, at the city of Pine Bluff, in said district, this 5th day of June, 1879.

[SEAL.] BENJ. F. FALL,
U. S. Commissioner, E. D. Ark's.

58 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, V. D. Wilkins, do solemnly swear that I am a resident of Pine Bluff, in Jefferson County, in the State of Arkansas; that I am worth ten thousand dollars beyond the amount of my just debts; and that I have property liable to execution in the State of Arkansas of the value of ten thousand dollars ($10,000).

V. D. WILKINS.

Sworn to and subscribed before me, a commissioner of the circuit court of the United States for the eastern district of Arkansas, at the city of Pine Bluff, in said district, this 5th day of June, A. D. 1879.

[SEAL.] BENJ. F. FALL,
U. S. Commissioner, E. D. Ark's.

59 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, J. M. Hudson, state on oath I am a resident of the State of Arkansas, and that I am the owner of property in said State and county of Jefferson, in said State, of the value of ten thousand dollars over and above my liabilities and the exemptions of said State, and have property in said county, subject to execution, of the value of ten thousand dollars.

J. M. HUDSON.

Sworn to and subscribed before me, a commissioner of the United States

circuit court for the eastern district of Arkansas, at the city of Pine Bluff, in said district, this the 5th day of June, 1879, A. D.

[SEAL.] BENJ. F. FALL,
U. S. Com'r, E. D. Ark's.

60 The within bond taken and approved, and to operate as a supersedeas, this ninth day of June, 1879.

HENRY C. CALDWELL, *Judge.*

Filed June 9, 1879. Ralph L. Goodrich, clerk.

61 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this 10th day of June, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States of America the one hundred and third.

[SEAL.] Attest: RALPH L. GOODRICH, *Clerk.*

(Indorsement on cover:) No. 176. E. S. Jaffray & Co.; W. A. Ransom & Co.; The Durham Manufacturing Co.; Hudson Bros.; McCombs, Caruth & Byrnes; A. E. Filley; Appleton, Noyes & Maude; W. H. Kellogg et al., appellants, vs. McGehee, Snowden & Violett, James Torrans, U. S. marshal, & James M. Hudson. E. Arkansas C. C. U. S. Filed 3rd February, 1880.

17-361

OFFICE SUPREME COURT U. S.
FILED
OCT 10 1882
JAMES H. McKENNEY, Clerk.

IN THE

SUPREME COURT OF UNITED STATES

NO. 176.

E. S. JAFFREY & Co. *et al.*, *Appellants*,

vs.

McGEHEE, SNOWDAN & VIOLET, *et al.*, *Appellees.*

Appeal from the Circuit Court of the United States of America for the Eastern District of Arkansas.

BRIEF AND ARGUMENT OF CLARK & WILLIAMS, ATTORNEYS FOR APPELLANTS.

UNION PRINTING COMPANY, LITTLE ROCK.

IN THE

SUPREME COURT OF UNITED STATES

NO. 176.

E. S. JAFFREY & Co. *et al.*, *Appellants*,

vs.

McGEHEE, SNOWDAN & VIOLET, *et al.*, *Appellees.*

Appeal from the Circuit Court of the United States of America for the Eastern District of Arkansas.

BRIEF AND ARGUMENT OF CLARK & WILLIAMS, ATTORNEYS FOR APPELLANTS.

STATEMENT OF CASE.

The facts of the case are stated in the order of their occurrence, as follows:

On the twenty-first day of December, 1878, the defendants, McGehee, Snowdan & Violet, recovered judgment in the Circuit Court for the Eastern District of Arkansas

against Moss & Bell, merchants at Pine Bluff, in said State, for the sum of $10,992.50, and costs of suit. Execution was issued on this judgment, bearing test the twelfth day of January, 1879 (See pages 2 and 3 of printed transcript), and which came to the hands of defendant Torrans, Marshal of said District, on the same day.

Previous to the rendition of this judgment, to wit, on the nineteenth day of December, 1878, the firm of Moss & Bell conveyed all the goods, wares and merchandise and choses in action in controversy to defendant James M. Hudson, as trustee, in trust for the payment of their debts. Hudson accepted the trust, filed a bond and inventory of the assets fully in compliance with the statute, and the goods were turned over to him and he took possession. The Marshal, Torrans, levied the execution of McGehee, Snowdan & Violet upon the goods in the hands of the trustee, Hudson, on the twelfth day of January, 1879, the day of the date of the execution.

The deed of assignment prefers the plaintiffs, and requires the trustee, out of the proceeds of the sales of the goods, to pay the creditors named therein (the plaintiffs), so far as such proceeds would extend, and if the same should over pay the said parties preferred, then to pay share and share alike any other indebtedness that the assignors might owe to any other creditors out of such surplus. The deed of assignment empowered and required the trustee to sell and dispose of all the property for cash, *as he should deem advisable and right, and to that end to use his own discretion*, subject to the supervision of the creditors; and to conduct

and transact all of the business as he might deem proper in the exercise of a sound discretion, *and as he should deem most advisable for the benefit of the creditors and the trust reposed in him.* And the deed reiterates that the proceeds of the trust are to be applied—first, to the expenses of the trust, including just commissions to the trustee; second, to the creditors preferred as aforesaid; and, third, the residue to be divided among all the other creditors of the assignors.

After submitting to an injunction and the appointment of a receiver, the defendants, McGehee, Snowdan & Violet, demurred to the complaint for want of equity.

The court sustained this demurrer, alleging in his decision that the deed of assignment was void on its face.

ASSIGNMENT OF ERRORS.

We assign for error this decision of the court: That is to say, we assign that the court erred in dismissing the complaint for want of equity; and in holding the said deed of assignment void.

ARGUMENT.

There is nothing in the record to show upon what ground the court below held the deed of assignment void. It was contended in that court that the proceedings under the assignment did not conform to the statutes of Arkansas, in that the schedule of the property was not filed in the probate office and bond given by the trustee until after the defendants' execution had come to the hands of the officer. But the record does not show this to be the fact. It is

alleged in the complaint and admitted by the demurrer that the schedule was filed and bond given on the twenty-first of December, 1878, and the execution was not issued until the twelfth day of January, 1879; nor could this point be material, because the Supreme Court of Arkansas has always held that the filing of the schedule and the giving of the bond were conditions subsequent to the vesting of title under the assignment—that such title vests upon the execution and delivery of the deed by the assignor.

See—

Clayton vs. Johnson, 36 Ark., 406.

Our statute of assignments, so far as it can have any bearing on the case, is as follows:

Gantt's Digest, section 385, provides that:

"* * * Before the assignee thereof shall be entitled to take possession, sell, or in any way manage or control any property so assigned, he should be required to file in the office of the clerk of the court exercising probate jurisdiction a full and complete inventory and description of such property; and also make and execute a bond to the State of Arkansas in double the estimated value of the property in the assignment, with good and sufficient security, to be approved by the judge of said court," etc.

Section 388 provides:

"Said assignee shall be required to sell all the property assigned to him, for the payment of *debts, at public auction*, within 120 days after the execution of the bond required by this act; and shall give at least thirty days' notice of the

time and place of such sale. And any person damaged by the neglect, waste or improper conduct of such assignee shall be entitled to bring his action," etc.

It is further contended that the deed of assignment was void because it empowered the trustee to sell and dispose of the property "for cash as he should deem advisable and right, and to that end to use his own discretion, subject to the supervision of the creditors," etc. Whereas, the statute requires it to be "sold at public auction, giving thirty days' notice of the time and place of sale," etc.

We contend that there is in fact no conflict between the assignment and the statute here. The statute does not require that the goods should not be sold "*for cash*," and the deed of assignment does not require that the trustee should not sell at "*public auction.*" The assignment leaves the trustee to pursue the statute wholly unrestrained—*i. e.*, the trustee is left entirely at liberty to comply with both the provisions of the assignment and the statute. To sell the goods at auction and for cash is neither a violation of the statute nor of the stipulations of the assignment. An entire discretion in the trustee necessarily leaves him at liberty to obey the law, and the conditions of his bond compel him to do so. And there is nothing in the record going to show that he was attempting or designed to do otherwise. But suppose the assignment did require him to proceed otherwise than as the law directs—suppose it required him to sell at private sale, instead of at auction—or not to sell within 120 days—or to sell on credit, and not for cash—on what principle would it render the whole deed void? Un-

questionably in our minds the utmost effect would be that the provisions which required proceedings in conflict with the statute would be void, and nothing more. The deed as a conveyance would still be valid, and the trustee could only be required to proceed according to the statute; and this because the statute as to the mode of proceedings is directory only, and does not in terms make void the assignment on account of its prescribing a different mode; and it may be questionable, we think, whether the statute was designed to be a rule of action as to the mode of proceeding by the assignee, except where no provision is made in the assignment. By the common law the assignee and the creditors, who were the *cestuis que trust*, had an entire discretion as to the disposition to be made of the property.

See—

Burrill on Assignments, second edition, 499.

And our court has held that the maker and beneficiaries may change the terms of sale.

Beebe vs. DeBaun, 8 Ark., 510.

Was it the design of the statute to take away this discretion of the trustee and *cestuis que trust* entirely? Why should it? What interest could any one but these parties have? And it will be noticed that the assignment here makes the discretion which it bestows on the assignee subject to the control of the creditors for whose benefit the assignment was made.

In the case of *Raleigh vs. Griffith, 37 Ark., 150*, the Supreme Court of Arkansas held a deed to be void which

was not in accordance with the statute, but in that case the deed provided that the trustee should dispose of the property either at public or private sale, either for cash or upon credit, and to such persons for such prices and on such terms and conditions as in his judgment might appear best and most for the interest of the party concerned. It does not plainly appear whether the court meant to put their decision setting aside the deed upon the ground of its conflicting with the provisions of the statute, or upon the ground that it contained provisions which made it fraudulent and void independent of the statute—for authority to sell on credit has been held in several States as such a badge of fraud as will void the deed, without reference to any such statute. See—

Burrill on Assignments, second edition, page 210, et seq.

Other States, again, have held the contrary, among them the State of Arkansas. However, we insist the decision in that case can not be upheld by either principle or precedent, in holding (if such is the purport of the decision) that the deed was void in toto for conflicting with the statute in the manner simply of disposing of the property, the deed being otherwise unobjectionable. There was no need nor reason for such a ruling, but only that the statute should prevail instead of the provisions of the deed, and the trustee required to comply with the statute. But that case has no application to the questions involved here. There is no provision in this deed requiring or authorizing the trustee to sell either at private sale or on credit—only for cash, in such manner as the trustee might deem best

for the interest of the beneficiaries, and subject to their control. The case is fully within that of—

Clayton vs. Johnson, 36 Ark., 406,

above referred to, and in which the deed was held valid.

But it is contended, we believe, that the deed of assignment is fraudulent as tending to hinder and delay creditors. This objection, of course, amounts to nothing, unless the deed contains special provisions or stipulations which the law recognizes as badges of fraud. A general deed to a trustee for the benefit of creditors, without conditions or reservations, can not hinder or delay creditors, and is always valid. Now, such is this deed. There is no reservation of any benefit to the assignors. Even a release of creditors is not required, as in the case of—

Clayton vs. Johnson, 36 Ark., 406,

where the deed was held valid. Nor are there any conditions whatever, except certain creditors are preferred. But, after paying the claims of these creditors, the residue is required to be distributed to all other creditors, share and share alike. In Arkansas, such a deed of assignment has been held valid by a current of decisions running back to the foundation of the Government. See—

Conway, ex parte, 4 Ark., 302.

Hannah vs. Carrington, 18 Ark., 85.

Hempstead vs. Johnson, 18 Ark., 123.

Barkman vs. Simmons, 23 Ark., 2.

Carnall vs. Duval, 22 Ark., 139.

Pettit vs. Johnson, 15 Ark., 60.

Pope vs. Boyd, 22 Ark., 538.

Cornish vs. Dews, 18 Ark., 172.

Biscoe vs. Royston, 18 Ark., 508.

Dews vs. Cornish, 20 Ark., 332.

McCain's Adm. vs. Pickens et al., 32 Ark., 397.

Clayton vs. Johnson, 36 Ark., 406.

Thatcher et al. vs. Franklin, 37 Ark., 64.

And such has been the holding of the Federal courts.

Adams vs. Blodgett, 2 W. & M., 233.

Fuller vs. Ives, 6 McLean, 478.

Harrison vs. Sterry, 5 Cranch, 289.

Spring vs. South Carolina Insurance Co., 8 Wh., 268.

Marbury vs. Brooks, 7 Wheat, 556; 11 Wheat, 78.

Pearpont vs. Graham, 4 Wh. C. C., 23.

Lawrence vs. Davis, 3 McLean, 177.

Halsey vs. Whitney, 4 Mason, 206.

We need not argue, after a reference to the above cases, that an assignor for benefit of creditors has a right to prefer certain creditors and postpone others until their debts are paid. This right is certainly well settled in Arkansas as well as in the Federal courts, whatever may have been held in other States. In *Bartlett vs. Teah, 1 McCrary C. C., 176*, it was held under our statute, referred to, section 385, "An assignor for the benefit of creditors acquires no title as

against attaching creditors until inventory filed and bond given, nor until then, can he lawfully take possession of the property." This certainly is in conflict with the decision of the State Supreme Court in the case referred to, of *Clayton vs. Johnson.* But it can have no bearing in this case, for here, as we have already shown, the inventory was filed and bond given and approved, and possession delivered before the execution came to the hands of the officer. There is no question, therefore, as to priority of title or lien as between the assignee and the plaintiff in the execution, and in such case the execution must fail. See—

Biscoe vs. Royston, 18 Ark., 508.

Pope vs. Boyd, 22 Ark., 538.

It has been repeatedly held by this court that the settled ruling of a State court as to the construction to be given the statutes of the State must prevail. There can, we think, be no question as to the validity of the assignment, under the statutes of Arkansas and the rulings of its Supreme Court.

CLARK & WILLIAMS,

For Appellants.

OFFICE SUPREME COURT U. S.
FILED
OCT 30 1882
JAMES H. McKENNEY, CLK.

17-361

IN THE

SUPREME COURT OF THE UNITED STATES

No. 176.

E. S. JAFFRAY & CO. ET AL., *Appellants*,

vs.

McGEHEE, SNOWDEN & VIOLETT ET AL., *Appellees*.

BRIEF FOR APPELLEES.

U. M. ROSE.

UNION PRINTING COMPANY, LITTLE ROCK.

IN THE

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No. 176.

E. S. JAFFRAY & CO. ET AL., *Appellants*,

vs.

McGEHEE, SNOWDEN & VIOLETT ET AL., *Appellees*.

BRIEF FOR APPELLEES.

As the brief of counsel for appellants omits what we take to be an important part of the statute, we here insert the whole statute, as it will be found on pages 207-8 of the Digest of the Statutes of Arkansas of 1874:

"SECTION 385. In all cases in which any person shall make an assignment of any property, whether real, personal or choses in action, for the payment of debts, before the assignee thereof shall be entitled to take possession, sell, or in any way manage or control any property so assigned, he shall be required to file in the office of the

clerk of the court exercising probate jurisdiction a full and complete inventory and description of such property; and also make and execute a bond to the State of Arkansas in double the estimated value of the property in said assignment, with good and sufficient security, to be approved by the judge of said court, conditioned that such assignee shall execute the trust confided to him, sell the property to the best advantage, and pay the proceeds thereof to the creditors mentioned in said assignment, *according to the terms thereof*, and faithfully perform the duties *according to law.*

"SECTION 386. Such assignee shall, at the first term of the court after one year from the date of said assignment, and at the corresponding term of said court every year thereafter, until the proceeds of the property assigned be disposed of for the benefit of creditors, present to the court a fair written statement or account current, in which he shall charge himself with the whole amount of the property assigned, including all debts due or to become due, and credit himself with all sums of money expended, either by payment of debts or otherwise, exhibiting with such account the receipts and vouchers for all moneys paid out to the creditors of said assignment, which said account, so made out, shall be filed in the office of the clerk of the court, and become a part of the record thereof; certified copies of which shall be competent evidence of the facts therein contained, in the same manner and to the same extent as the records of any other court.

"SECTION 387. Said assignee shall be required *to sell all the property assigned to him for the payment of debts, at public*

auction, within one hundred and twenty days after the execution of the bond required by this act, and shall give at least thirty days' notice of the time and place of such sale; and any person damaged by the neglect, waste, or improper conduct of such assignee shall be entitled to bring his action on the bond, in the name of the State, for the use and benefit of such person.

"Approved February 15, 1859."

All the Arkansas cases cited for the appellant—save *McCain vs. Pickens, 32 Ark., 397; Clayton vs. Johnson, 36 Id., 406; Thatcher vs. Franklin, 37 Id., 64*, and *Raleigh vs. Griffith, Id., 150*—were decided before the passage of this act: consequently they have no application to this case. They are also based upon various points which throw no light on the inquiry before the court.

The provision in the deed is that the trustee "shall, and he is hereby empowered to, proceed to sell and dispose of all of said property for cash, *as he shall deem advisable and right*, and to this end to *use his own discretion*, subject to the supervision of the creditors, and to *collect and receipt for* all the claims and demands herein transferred, and to *conduct and transact all of the business as he may deem proper in the exercise of a sound discretion, and as he shall deem most advisable* for the benefit of creditors; and he shall have *power to appoint such assistants, agents and attorneys as in his judgment the same may be necessary* to enable him to fulfill this trust." Rec., 13.

The policy of the statute is well defined, and its requirements are peremptory. No discretion is vested in the trustee. He is to make a sale "at public auction."

The language of the deed is quite otherwise. By that the trustee is to sell for cash, "*as he may deem advisable* and right." That is a wide grant of power. He might sell by wholesale or by retail, and he might continue selling as long as he pleased; waiting in his discretion for better prices. He was to "collect and receipt for all the claims and demands." This might involve immense delays, tedious lawsuits, all dependent on the discretion of the trustee.

Moreover, he was to "conduct and transact all of *the business* as he may deem proper in the exercise of a sound discretion, and as he shall deem most advisable for the benefit of the creditors."

This is a grant of unlimited discretion; a blank power of attorney, to be filled up by the trustee as he pleases.

Besides, he is to have "power to appoint such agents, assistant agents and attorneys as in his judgment the same may be necessary to enable him to fulfill this trust."

Here again everything depends on his discretion, which is everywhere substituted for "the golden met-wand of the law."

Obviously this deed is bad. By the bond the trustee is required to bind himself to execute the trust confided to him "according to the terms" of the *deed;* and to "perform the duties according to *law*." It is quite apparent that he might act strictly within the provisions of the deed, and at the same time be a long way from acting according to the provisions of the law.

It is to be noticed that the deed describes the assignors as "merchants and partners doing business at Pine Bluff." Then the deed authorizes the trustee to "transact all of the business as he may deem proper." The only business named is that of a merchant. The authority to employ assistants, agents and attorneys shows that it was contemplated that there should be a continuance of the business vacated by the assignors in such way as in the judgment of the assignee might be "necessary to enable him to fulfill this trust."

The effect of this arrangement was simply to make the trustee the agent of the assignor to carry on the business according to his discretion. The deed gives a preference. By its terms the creditors not preferred might be kept out of their debts for an indefinite period.

"The law will not permit a proceeding of this kind. It will not allow the creditor to make use of his debt for any other purpose than his own indemnity. If he goes beyond this, and puts into the contract stipulations which have the effect to shield the property for his debtor, so that creditors are delayed in the collection of their debts, a court of equity will not lend its aid so enforce the contract."

Robinson vs. Elliott, 22 Wall., 523.

The case of *McCain vs. Pickens, 32 Ark., 399*, cited for appellant, has no application. In that case the court only decided that where an assignment is conditional that the debtor shall be released, the consent of the creditors will not be presumed.

In *Clayton vs. Johnson, 36 Id., 406*, it was decided that the giving bond and filing a schedule by the assignee are not, under the statute, conditions precedent to the vesting of title in him; and that an assignment for the benefit of creditors with a stipulation for release, is not void.

In *Thatcher vs. Franklin, 37 Ark., 64*, the same thing is decided as in *Clayton vs. Johnson*.

In *Raleigh vs. Griffith, 37 Ark., 153*, the deed was not nearly so objectionable as the one now before your honors. It provided "that the party of the second part shall take possession of all and singular the property and effects hereby assigned, and sell and dispose of the same, either at public or private sale, to such person or persons, for such prices and on such terms and conditions, either for cash or upon credit, as in his judgment may appear best, and most for the interest of the parties concerned, and convert the same into money."

It provided also for the appointment of agents, and for insurance of the property, and did not provide for carrying on the business of the assignor any farther than might be implied from the provisions above copied.

The deed was held void.

Learned counsel for appellants say that "it does not plainly appear whether the court meant to put their decision setting aside the deed upon the ground of its conflicting with the provisions of the statute, or upon the ground that it contained provisions which made it fraudulent and void independent of the statute." Page 7.

Either way it would make but little difference to us, as it is settled that this court will follow the rules of decision of the State court of last resort in cases like the present.

Brashear vs. West, 7 Peters, 615.

Nevertheless, the Supreme Court of Arkansas did plainly hold that the deed was void because not in accordance with the requirements of the statute. It cited the third section of the act in words. Then the court said:

"In providing for the sale of the property, the statute is disregarded in the deed of assignment. The assignee was authorized to sell at private or public sale, and for cash or credit. Under such provisions, it was in the power and discretion of the assignee to prolong the execution and closing of the trust for an indefinite period. The Legislature deemed it expedient, as a matter of public policy, to require assignees in general deeds of assignment for the benefit of creditors, to sell all property assigned to them for the payment of debts, at public auction, within one hundred and twenty days after the execution of the bond, on thirty days' notice of the time and place of sale. The power of the Legislature to make such regulation has never been judicially questioned."

Then the court say that in some States where no such statute existed, such deeds have been held void, and then conclude:

"The statute prescribes a mode of sale in this State, and dissenting creditors are not bound by a deed made in direct contravention of a plain provision of the statute."

There would not appear to be anything ambiguous about this.

In *Bartlett vs. Teah, 1 McCrary, 176*, the court held that an assignment which in terms or by necessary implication forbids a sale at auction before the end of a year, is void.

That case may be referred to as giving a history of the statute, and the abuses that it was intended to prevent.

It is to be noted that in *Raleigh vs. Griffith* the deed did not *require* the sale to be on a credit; it only *authorized* such a sale, within the discretion of the assignee. He might still have sold at auction within the time named in the statute.

So in this case. The deed does not require that the sale shall not be at auction; but by it the trustee is "empowered to proceed to sell and dispose of all of the said property for cash, as he may deem advisable and right," and to this end to use "his own discretion."

In both cases the same fatal discretion is left with the trustee—a discretion to do what the law does not allow him to do—a discretion to evade or violate the law. The principle is the same in both cases.

The decision of the Supreme Court of Arkansas is well sustained by the rulings of the courts of other States.

In *Jones vs. Syer, 52 Md., 211, S. C. 36 Am. R., 366*, a deed very similar was made. The court said:

"It is obvious the certain effect of this clause would be to hinder and delay creditors; and, as against them, such provision renders the deed utterly void. It is an attempt

on the part of the creditor to place his property, for an uncertain and indefinite period, beyond the reach of his creditors, and to make their rights dependent in a great measure upon *the uncontrolled discretion of a trustee of the debtor's own selection*. The law will tolerate no such attempt; but treats the act as a fraud upon creditors, and the instrument of conveyance as simply void as against them."

In *Sumner vs. Hicks, 2 Black., 532*, the deed directed the trustee "to sell and dispose of the same *upon such terms and conditions as in his judgment shall appear best and most for the interest of the parties concerned.*"

This court held the deed void.

It is true that that decision was made upon the rulings in Wisconsin, where the suit originated; but this court said that "this ruling of the Supreme Court of Wisconsin is sustained by numerous adjudications in other States."

The decisions referred to are based upon the statute of Elizabeth, which was only declaratory of the common law.

As this court said in *Sumner vs. Hicks*, "In the absence of such legislation the common law would have accomplished the same results."

Here, however, we have an express statute upon this particular point.

It is clear that if such a deed as this could stand, the statute would be of no avail. Under the ample discretion contained in the deed the trustee might have continued the business of winding up the trust as long as he pleased, and it could not be said that he had exceeded the power con-

ferred upon him. As the trustee was selected by the debtor, the method in which the discretion would be used was probably foreseen. At least the precedent of upholding such a deed would open the way to unnumbered frauds; all of which the statute was designed to prevent, and which it will prevent if not paralyzed by latitudinarian construction. Up to this time no decision has been rendered tending to impair its efficacy.

As we have said, the authority "to conduct and transact all of the business as he may deem proper, in the exercise of a sound discretion, and as he shall deem most advisable," amounts to an unlimited grant of power.

In *Jessup vs. Hulse*, *21 N. Y., 168*, the court held the assignment valid; but Judge Selden said:

"If the clause in question purported, in terms, to invest the assignee with any discretion, as coming directly from the assignor himself, it would be fatal to the assignment; as if it had authorized the assignee to dispose of the property at such time and in such manner as, in his judgment, would be most conducive to the interests of the creditors, or as he should deem expedient and best calculated to promote their interests."

Rapalee vs. Stewart, *27 N. Y., 316*, was a case falling within this supposition of Judge Selden, and the court accordingly held the assignment void.

As this assignment prefers certain creditors, the grant of an unbounded discretion to be used "for the benefit of creditors," would have the effect, if the assignee consulted

with the creditors, to throw the matter into the hands of those preferred, as they had a direct and visible interest; whereas that of the other creditors was most probably extremely shadowy.

We also refer to the case of *Schoolfield vs. Johnson, 11 Federal Reporter, 297*, where a like ruling was made as in this case. It will be seen by the opinion in *Schoolfield vs. Johnson* that the same point had been ruled in the same way in previous cases, before a full bench: so that the principle involved may fairly be said to have become a rule of property in Arkansas.

Respectfully,

U. M. ROSE,
For Appellees.